IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1097 of 2007
With
CIVIL APPLICATION No. 3101 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
ASHWINBHAI JAYANTIBHA PATEL & 2 - Defendant(s)

==========

Appearance :
MR SANDIP C SHAH for Appellant(s) : 1,
None for Defendant(s) : 1 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

This appeal arises out of a judgement and award dated 3rd February, 2006 passed by the Motor Accident Claims Tribunal (Aux.), Fast Track Court, Navsari in MACP No.49/1998.

2. On 15thJuly,1997, when one Ashwinbhai Jayantibhai Patel was travelling on Hero Honda Motorcycle as a pillion rider, the motorcycle was hit by a tempo bearing registration no. G.J.15.T.0757. The accident caused serious bodily injuries to said Ashwinbhai Jayantibhai Patel. The other two travellers on the Motorcycle received injuries of different seriousness. This accident therefore, gave rise to three separate claim petitions.

3. Learned advocate Shri Sandip Shah appearing for the appellant insurance company which was the insurer of the tempo involved in the accident stated before us that the appellant insurance company has preferred the appeal only in the present claim petition and has not challenged the award being one of minor amount in one case and settled the other claim with the claimant.

4. Shri Ashwinbhai Jayantibhai Patel for the injuries received in the said accident, filed above mentioned claim petition before the Claims Tribunal seeking compensation of Rs. 9,00,000/-.

5. The Claims Tribunal on the basis of evidence on record had no hesitation in coming to the conclusion that the accident occurred on account of sole negligence on part of the driver of the tempo.

6. With respect to quantum of compensation, the claimant had led medical evidence to show that he had received serious injuries in the accident. In fact, it was established before the Tribunal that on account of the accident, both legs of the claimant had suffered serious injuries. His anus had got ruptured. His Urethra also had got ruptured. He had a fracture on the hip joint. He had to be treated in several hospitals. He remained as an indoor patient for 91 days during which he had to undergo operations. Thereafter, also he had to take treatment as an outdoor patient for a long time. The claimant also urged before the Tribunal that on account of such serious bodily injuries, he had to spend huge amounts for medical treatment. He required constant attention of two attendants and also required to purchase medicines and take special diet. The claimant had also examined Doctors and produced certificate of disability.

7. On the basis of evidence led by the claimant, the Tribunal awarded compensation under different heads as follows :

Rs.30,000/-	for pain, shock and suffering
Rs.12,000/-	for attendant charges
Rs.5,000/-	for special diet
Rs.5,000/-	for transportation charges
Rs.1,55,000/-	for hospitalization and medical treatment
Rs.36,000/-	for actual loss of income for one year
Rs.32,400/-	for future economic loss on account of injury to the right leg
Rs.2,00,000/-	for future economic loss on account of total inactivity.
Rs.2,50,000/-	for non pecuniary loss such as pain, shock and suffering and loss of amenities of life.
Rs.7,25,400/-	total compensation

8. The Tribunal also awarded interest at the rate of 9% per annum from the date of claim petition till realisation.

9. Before us, learned advocate Mr. Sandip Shah for the appellant insurance company confined the arguments mainly on the quantum of compensation. With respect to the nature of accident and the conclusion of the Tribunal regarding negligence of the tempo driver in causing such an accident, there was neither any possibility nor any detailed arguments advanced. Learned advocate

Mr. Sandip Shah however, submitted that the Tribunal awarded a total compensation which was excessive. In particular, he submitted that the Tribunal has awarded a sum of Rs. 2,50,000/- under the head of pain, shock and suffering and loss of amenities of life which is excessive. He further submitted that the Tribunal has already separately awarded a sum of Rs. 30,000/- under the head of pain, shock and suffering and that therefore, further directions under the same head is not justified. He therefore, submitted that the ultimate compensation awarded by the Tribunal should be reduced.

10. It may be noted that the claimant was aged only 28 years on the date of accident. There was evidence on record to suggest that he was employed in diamond polishing work. We would therefore, have to consider the justness of compensation awarded by the Tribunal on the basis of these factors as well as on the basis of other evidence on record including the nature of injuries suffered by the claimant and the medical evidence regarding his disabilities.

11. We have briefly noted in the earlier part of this order the nature of injuries suffered by the claimant. As noted, the accident caused rupture in the anus of the claimant. The Urethra also was seriously damaged. He was rendered virtually bedridden for the rest of his life. In

addition to these serious injuries, he also had a compound fracture in his hip bone, requiring surgery. He remained as an indoor patient for 91 days and had to take further treatment for a long period thereafter. The claimant had to go to the Court for giving evidence also in a Stretcher. His both legs were rendered virtually paralytic. He had lost control over his urine and stool passing. Considering all these aspects of the matter, in our opinion, the Tribunal committed no error in awarding a sum of Rs.36,000/- for actual loss of income for a period of one year. The Tribunal also awarded a rather modest sum of Rs.2,00,000/- for the future loss of income of the claimant who was aged only 30 years on the date of accident and who has been rendered completely inactive due to the injuries for rest of his life. The claimant was engaged in diamond polishing work. The Tribunal believed his monthly income of Rs.3,000/-. Tribunal however, gave no reason or break up for awarding a sum of Rs. 2,00,000/- for future loss of income. Considering the age of the claimant, his earning capacity before the accident and his disability, the award under this head is inadequate. The Tribunal adopted a somewhat unusual method and awarded a further sum of Rs. 32,400/- for future loss of income due to injury on the leg of the claimant. We may record that such separate calculation for loss of earning capacity for different disabilities

related to injuries to different parts of the body is not an acceptable method and the Tribunal should have assessed the loss of future earning under a single head considering the disability suffered by the claimant for the body as as whole and thereafter, assessing reduction in his earning capacity on that basis, considering the nature of his occupation. Even then a total award of Rs. 2,32,400/- for loss of future income is, if at all, on the lower side considering the near total loss of earning capacity of the claimant and his young age.

12. The Tribunal awarded a sum of Rs. 1,55,000/- for medicines and hospitalization charges on the basis of evidence on record. Here also, we find no possibility of interfering. The other grounds such as attendant charges, special diet and transportation are also quite modest. As noted, main dispute was made by learned advocate Mr Sandip Shah for the appellant on the award of Rs. 2,50,000/- for pain, shock and suffering and loss of enjoyment of life. The medical evidence supported the case of the claimant that he was rendered completely bedridden and was virtually paralytic below the waist. In addition thereto, he had to have a hole drilled in his Urethra to ease his pressure. His bowel movements were also considerably damaged and he had to rely on artificial means to attend the call of nature. He would surely need external help and other

attendants to see him through for the rest of his life. His enjoyment of marriage life would certainly come to an end. It has been brought on record that injuries led to total impotency. In short, he is rendered completely disabled to lead a normal married life. All these aspects of the matter, the nature of injuries, permanent disability that the injury has left on the claimant and relative young age of the claimant on the date of accident, would convince us not to interfere with the total compensation awarded. It may be true that the Tribunal has awarded compensation for pain, shock and suffering and for loss of amenities of life under two different heads, the same however can be reconciled. What the Tribunal meant to convey was amount of Rs.30,000/- is being awarded for pain, shock and suffering that the claimant underwent due to the accident and actual treatment whereas further sum of Rs.2,50,000/- is awarded for pain, shock and suffering for rest of his life and for diminished enjoyment of amenities of life. In any case, since total compensation in facts of the case is not excessive, we see no reason to interfere. As noticed earlier, awarding a sum of Rs. 2,32,400/- for future loss of income for an abled bodied person aged 28 years on the date of accident and who was employed in diamond polishing work is certainly a rather modest award.

13. Under the circumstances, we see no possibility of interference. The appeal is therefore, dismissed.

14. Since the appeal is dismissed, application for stay also stands dismissed. Stay granted earlier against execution of award is vacated.

15. The amount deposited before this Court by the appellant insurance company at the time of filing the First Appeal shall be transmitted to the Claims Tribunal within a period of four weeks from today.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)